



LARRY WALKER
Auditor/Controller - Recorder

P Counter

RECORDING REQUESTED BY:

CCG Ontario, LLC
3990 Westerly Place, Suite 200
Newport Beach, California 92660

Doc#: 2002-0192970



Titles: 1 Pages: 13

Fees	0.00
Taxes	0.00
Other	0.00
PAID	\$0.00

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Thomas Cota, Chief
Southern California Cleanup Operations Branch - Cypress

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: A portion of the former Kaiser Steel Mill site known as the West Slag Pile)

This Covenant and Agreement ("Covenant") is made by and between CCG Ontario, LLC (the "Covenantor"), the current owner of subject property to be restricted herein, situated in the County of San Bernardino, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the State of California acting by and through the California Environmental Protection Agency, Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c) and Health and Safety Code Sections 25222.1 and 25355.5 the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as specifically described below.

The Covenantor and the Department, collectively referred to as the "Parties", therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I
STATEMENT OF FACTS

1.01 The West Slag Pile, a 134-acre parcel, is more particularly described and depicted in Exhibit "A" and Figure 1 attached hereto and incorporated herein by this reference. The Property is a portion of the former Kaiser Steel Mill and is located in an area bounded by the I-10 freeway to the south, a Southern California Edison (SCE) transmission line easement to the west, San Bernardino Avenue to the north, and the San Sevaine Drainage Channel and East Slag Pile to the east, in the County of San Bernardino, State of California.

1.02 In August 1988, DTSC entered into a Consent Order for the remediation of the Property with the previous landowner, Kaiser Ventures Inc. The current landowner, CCG Ontario LLC, acquired the Property in August 2000, and entered into an Imminent and Substantial Endangerment Determination and Consent Order with the Department, pursuant to Health and Safety Code section 25355.5, on August 10, 2000 (August 2000 Consent Order). The West Slag Pile was formerly part of Operable Unit No. 3 (OU-3) of the former Kaiser Steel Mill as set forth in the August 2000 Consent Order.

1.03 All of the West Slag Pile was used by the former Kaiser Steel Corporation for storage and disposal of slag. In addition to slag, construction debris was incorporated into the slag piles. Slag is an inert by-product from the steel making process. Slag is considered a marketable by-product of the steel industry. Operations to mine and process the slag on the West Slag Pile began in 1994 and continued through 2001, when the slag processing operations were moved to the East Slag Pile. In

1999, the West Slag Pile was estimated to contain between 3.5 to 4 million tons of slag, some of which was subsequently removed in the following two years of mining operations.

1.04 Kaiser Ventures Inc., the former landowner, sampled and analyzed the slag in the East and West Slag Piles to characterize the material. The results were presented to DTSC in the report "*Slag Sampling and Analysis, East and West Slag Piles*" (SCS Engineers, February 18, 1997). Based on the data presented in that report, the Department determined that the slag in the West and East Slag Piles is not a hazardous waste and does not pose an unacceptable risk to human health or the environment (letter from Greg Holmes, to Anthony Silva, Kaiser Ventures Inc., January 6, 1998). In December 1998, Kaiser Ventures Inc. completed a remedial investigation of the West Slag pile, which included sampling and analyzing the slag and surrounding soils. Kaiser Ventures Inc. submitted a summary of the sampling results to the Department ("*Sampling Summary for West Slag Pile, Operable Unit 3, Former Kaiser Steel Mill, Fontana, California*," Mission Geoscience, Inc., January 20, 1999).

1.05. Elevated levels of arsenic were found in soils in and around the West Slag Pile (*Sampling Summary for West Slag Pile, Operable Unit 3, Former Kaiser Steel Mill, Fontana, California*, Mission Geoscience, Inc., January 20, 1999). Concentrations of arsenic in soil have been found to range from non-detect to 18.2 mg/kg, with a mean of 5.19 mg/kg and a 95% upper confidence limit (UCL) of 6.21 mg/kg. Arsenic is a hazardous material as defined in H&S Code Section 25260. Background concentrations of arsenic present were detected at 10.4 mg/kg. The concentrations above background present a risk that exceeds 1×10^{-6} cancer risk. The Department concurred that a Preliminary Endangerment Assessment (PEA) was not necessary for the site, but required an "industrial-use only deed restriction" because of elevated levels of arsenic in native soils within and surrounding the West Slag Pile (letter from Greg Holmes, to Eric Hendrix, Mission Geoscience, Inc., February 17, 1999).

1.06 The validated slag sampling results, along with a report of other remedial investigation activities undertaken by Kaiser Ventures Inc., were formally presented to the Department in the "*Report*

of Remedial Investigation, West Slag Pile, Operable Unit No. 3, former Kaiser Steel Mill, Fontana, California" (Mission Geoscience, Inc., February 5, 1999). Based on the data presented in the *Report of Remedial Investigation*, the Department concluded that neither further investigation nor remedial action was necessary at the West Slag Pile, and that the requirements of the August 1988 Kaiser Consent Order had been satisfied with respect to the West Slag Pile. The Department further requested, however, that an "Environmental Grading and Construction Activity Contingency Plan" be developed and submitted to the Department prior to commencing any grading or construction activities (letter from Greg Holmes, to Anthony Silva, Kaiser Ventures Inc., March 17, 1999).

1.07 CCG Ontario LLC purchased the property from Kaiser Ventures Inc. in August 2000, and began redevelopment of the property in 2001. CCG Ontario LLC prepared and submitted to the Department an "*Environmental Grading and Construction Activity Contingency Plan*" (IT Corporation, April 17, 2001) for the West Slag Pile.

1.08 Grading of the West Slag Pile began in June 2001 with concurrence from the Department. As part of site preparation, the remaining slag from the West Slag Pile was removed and any construction debris encountered was segregated in accordance with the *Environmental Grading and Construction Activity Contingency Plan*. Some slag was returned to the area of the West Slag Pile as engineered fill, as approved by the Department; construction debris was removed from the property. Grading of the West Slag Pile is now substantially complete, and a Parcel Map for the entire Kaiser Commerce Center, of which the West Slag Pile property is a part, will be filed with San Bernardino County in April 2002.

1.09 The Department determined that no further investigation, remedial action, or Preliminary Endangerment Assessment was necessary for the West Slag Pile, contingent upon an industrial-use only deed restriction and an Environmental Grading and Construction Activity Contingency Plan. Based on this earlier determination, the Department redefined OU-3 to exclude the West Slag Pile as set forth in

the August 2000 Consent Order. CCG Ontario complied with the requirement for the Environmental Grading and Construction Activity Contingency Plan, but later discovered that the deed restriction required by the Department had never been placed by Kaiser Ventures Inc. Therefore, to comply with the Department's requirements, and in order to protect human health, safety and the environment as a result of elevated levels of arsenic in soils in and around the West Slag Pile, the Covenantor agrees that it is reasonable and prudent to enter into the land use restrictions provided for in this Covenant.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" means the State of California by and through the Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 Owner. "Owner" shall include the Covenantor, the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during his or her ownership of all or any portion of the Property.

2.03 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04 Covenantor. "Covenantor" shall mean CCG Ontario LLC.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land in perpetuity pursuant to H&SC sections 25222.1 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) shall apply to and bind all subsequent Occupants of the Property; (d) is for the benefit of, and is enforceable by the Department; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners/Occupants. Pursuant to H&SC sections 25222.1, 25355.5(a)(1)(C), this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Written Notice of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice to the subsequent transferee that chemical substances have come to be located on or beneath the Property, pursuant to Health and Safety Code section 25359.7.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05 Conveyance of Property. The Owner shall provide notice to the Department no later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages,

liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant alone, have authority to approve, disapprove, or otherwise affect a conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV

RESTRICTIONS

4.01 Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as a permanently-occupied residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02 Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI

VARIANCE AND TERMINATION

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Unless ended in accordance with the termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Bernardino within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: CCG Ontario, LLC
3990 Westerly Place, Suite 200
Newport Beach, California 92660
Attention: Charlie McPhee

To Department: Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Attention: Thomas Cota, Chief
Southern California Cleanup Operations Branch – Cypress

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: CCG Ontario, LLC

By: 

Title: Sr. Vice President

Date: 4-10-02

Department of Toxic Substances Control

By: 

Title: Branch Chief

Date: 4/11/02

By: _____

STATE OF CALIFORNIA)

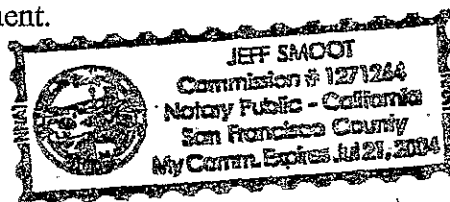
COUNTY OF ORANGE)

On this 10th day of April, in the year 2002, before me

JEFF SMOOT, personally appeared PAT CAVANAGH
_____, personally known to me (or proved to me on

the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

[Handwritten Signature]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

ORANGE

ss.

On APRIL 11, 2002

before me,

CHRISTOPHER CHEEKIONG CHEW, Notary Public

personally appeared

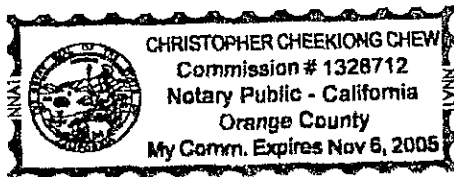
THOMAS MICHAEL COTA

Name(s) of Signer(s)

☐ personally known to me

☒ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

COVENANT TO RESTRICT USE OF PROPERTY ENVIRONMENTAL RESTRICTION

Document Date:

APRIL 11, 2002

Number of Pages:

10

Signer(s) Other Than Named Above:

PAT CAVANAGH

Capacity(ies) Claimed by Signer

Signer's Name:

THOMAS MICHAEL COTA

☐ Individual

☒ Corporate Officer — Title(s):

BRANCH CHIEF

☐ Partner — ☐ Limited ☐ General

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

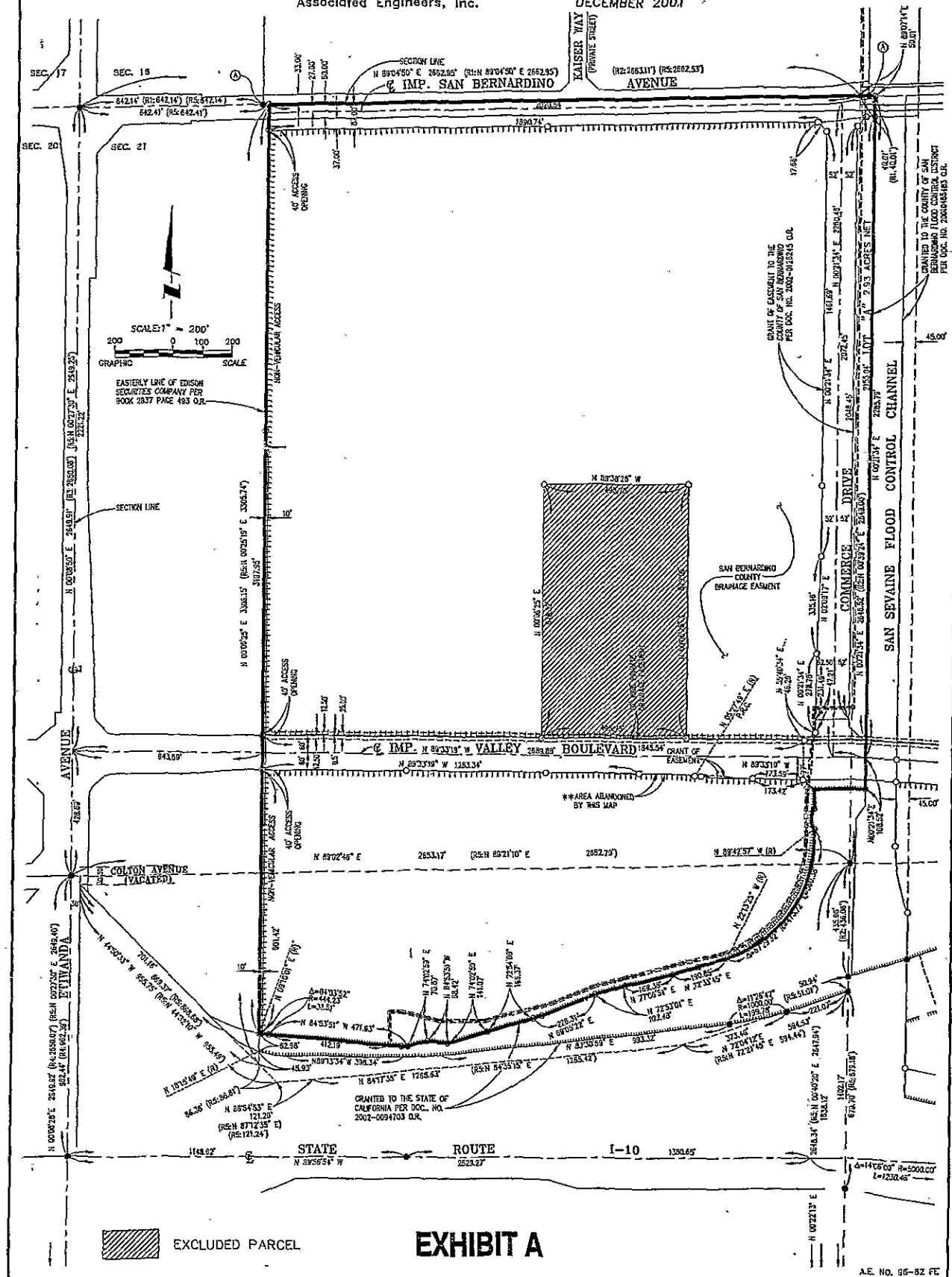
Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

BEING A SUBDIVISION OF A PORTION OF SECTION 21, TOWNSHIP 1 SOUTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN AND A PORTION OF PARCEL 3 OF PARCEL-MAP NO. 8682, AS PER MAP RECORDED IN BOOK 89, PAGES 37 THROUGH 43, INCLUSIVE OF PARCEL MAPS, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

Associated Engineers, Inc.

DECEMBER 2001



**LEGAL DESCRIPTION
(Deed Restriction)**

Being a portion of Section 21, Township 1 South, Range 6 West, San Bernardino Meridian, situated in the County of San Bernardino, State of California, more particularly described as follows:

Commencing at the northwest corner of said Section 21; thence North 89°04'50" East, 642.41 feet along the north line of said Section 21 to a point in the easterly line of the land conveyed to EDISON SECURITIES COMPANY by deed recorded in Book 2837 Page 493 of Official Records of said County, said point being the **TRUE POINT OF BEGINNING**; thence North 89°04'50" East, 2020.54 feet along the north line of said Section 21 to the North 1/4 corner thereof; thence North 89°07'44" East, 50.01 feet continuing along said north line to a point on a line parallel with and 50.00 feet easterly of the center 1/4 Section line of said Section 21; thence South 00°21'34" West, 2285.79 feet along said parallel line to a point on the centerline of Valley Boulevard as described in Document No. 2001-0415361 of Official Records, said point being on a non-tangent curve concave southerly, having a radius of 2200.00 feet, a radial bearing to said point bears North 00°48'52" East, thence westerly along said curve and said centerline through a central angle of 00°00'57" an arc length of 0.61 feet; thence South 00°21'34" West, 108.52 feet to a point on the northerly line of the land Granted to the State of California per Document No. 2002-0094704 of Official Records; thence North 89°59'37" West, 175.12 along the northerly line of said land to a point on the northerly line of the land Granted to the State of California per Document No. 2002-0094703 of Official Records; thence along the northerly line of said land the following; thence South 00°06'09" West, 67.35 feet; thence South 31°00'50" West, 18.64 feet; thence South 00°02'57" West, 38.26 feet; thence South 30°55'06" East, 18.51 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 475.72 feet, a radial line to said point bears South 89°42'57" East; thence southerly along said curve through a central angle of 67°29'32" an arc length of 560.38 feet; thence South 72°33'45" West, 190.85 feet; thence South 77°06'51" West, 169.38 feet; thence South 72°53'01" West, 103.48 feet; thence South 69°05'22" West, 226.31 feet; thence South 72°54'09" West, 166.37 feet; thence South 74°02'59" West, 141.07 feet; thence North 84°53'51" West, 68.42 feet; thence South 74°02'59" West, 70.87 feet; thence North 84°53'51" West, 471.63 feet to the beginning of a tangent curve concave northerly having a radius of 444.23 feet; thence westerly along said curve through a central angle of 04°03'52" an arc length of 31.51 feet; thence leaving said northerly line North 00°06'25" East, 3197.95 feet to the **TRUE POINT OF BEGINNING**.

Except therefrom the following:

Commencing at the northwest corner of said Section 21; thence North 89°04'50" East, 1590.54 feet along the north line of said Section 21; thence South 00°06'25" West, 1320.77 feet to the **TRUE POINT OF BEGINNING**; thence continuing South 00°06'25" West, 878.33 feet; thence South 89°39'37" East, 495.74 feet; thence North 00°06'25" East, 879.06 feet; thence North 89°38'26" West, 495.74 feet to the **TRUE POINT OF BEGINNING**.

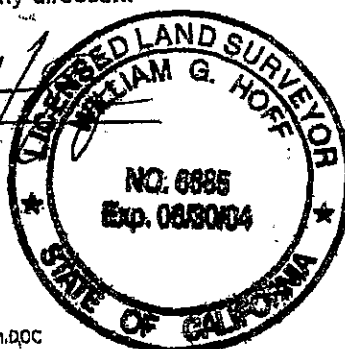
The land herein described contains approximately 134.12 acres.

All bearings and distances in this description are grid, based on the California Coordinate System (NAD 83), Zone 5. To obtain ground distances, divide the (grid) distance shown by 0.99993670 (average combination factor).

This description prepared under my direction:

William G. Hoff, L.S. 6685
License Expires 06/30/04

J.N. 96-82FE



Date

4/11/02